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8 **UNITED STATES DISTRICT COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA**

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11 JOHN HO, an individual

12 Plaintiff,

13 vs.

14 THE ARROYO PARKWAY, LLC, a
15 limited liability company

16 Defendants.

17 Case No.: 2:22-cv-3445

18

19 **COMPLAINT FOR**

20

21 **(1) VIOLATION OF THE UNRUH
22 CIVIL RIGHTS ACT
23 (CALIFORNIA CIVIL CODE
24 §§ 51, 52);**

25

26 **(2) VIOLATIONS OF THE
27 AMERICANS WITH
28 DISABILITIES ACT OF 1990**

I. SUMMARY

1. This is a civil rights action by plaintiff John Ho (“Plaintiff”) for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex located 577 S Arroyo Pkwy, Pasadena, CA 91105, where the business “Guisados” operates (the “Property”). Plaintiff frequents the area for dining, shopping and entertainment as he lives approximately 15-20 minutes from the Property. In this particular instance, Plaintiff desired to patronize the “Guisados” restaurant located on the property.

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney's fees and costs pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, et seq.) and related California statutes¹ against the owner of the property THE ARROYO PARKWAY, LLC, a limited liability company ("Defendant").

II.

JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1333 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law – arising from the same nucleus of operative facts – is predicated on 28 U.S.C § 1337.

5. Plaintiff's claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III.

VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Central District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c)

¹ Plaintiff is not currently asserting a cause of action under California Civil Code § 55, but may amend his complaint at a later time upon discovery of facts which give rise to such a claim.

IV.

PARTIES

7. On information and belief, Plaintiff alleges that Defendant is or was at the time of the incident, the owner, operator, lessor and/or lessee of the Property, and consist of a person (or persons), firm, company, and/or corporation.

8. Plaintiff is a T-12 paraplegic, and as a result is unable to walk or stand, and thus requires a use of a wheelchair at all times when traveling in public. Plaintiff is “physically disabled” as defined by all applicable California and United States laws, and a member of the public whose rights are protected by these laws. Plaintiff is a resident of Los Angeles County, California. Plaintiff is considered a high frequency litigant as that term is defined in California Code of Civil Procedure § 425.55(b). In the twelve months preceding the filing of this complaint, Plaintiff filed twenty-three (23) other construction accessibility related claims (not including this one).

V.

FACTS

9. On March 11, 2022, Plaintiff patronized the Property. The Property is a sales or retail establishment, open to the public, which is intended for nonresidential use and whose operation affects commerce.

10. Plaintiff visited the Property and encountered barriers (both physical and intangible) that interfered with – if not outright denied – Plaintiff’s ability to use and enjoy the goods, services, privileges and accommodations offered at the facility. To the extent known by Plaintiff, the barriers at the Property included, but are not limited to the following:

a. There is no accessible parking provided at the Property. Specifically, it appears that outdoor seating has been placed thus blocking the previous accessible parking at the Property. To safely exit and enter out of his car, Plaintiff requires the use of a properly configured accessible parking

1 space. To transfer out of his vehicle onto his wheelchair, Plaintiff needs
2 to use the access aisle that accompanies any accessible parking space.

3 Without a properly configured access aisle, Plaintiff has no space to
4 transfer in and out of his car from his wheelchair. Plaintiff further cannot
5 park in a non accessible space as in the past, cars have parked directly
6 next to Plaintiff thus blocking Plaintiff from being able to re enter his car.

7 **11.** These barriers to access are listed without prejudice to Plaintiff citing
8 additional barriers to access after inspection by Plaintiff's access consultant, per the
9th Circuits standing standards under *Doran v. 7-Eleven, Inc.* 524 F.3d 1034 (9th Cir.
10 2008). These barriers prevented Plaintiff from enjoying full and equal access to the
11 Property.

12 **12.** Plaintiff thus experienced difficulty and discomfort as a result of the
13 accessible barriers he encountered. Although he would like to return to the Property
14 to patronize the convenience store at the Property, he continues to be deterred from
15 visiting the Property because of the future threats of injury created by these barriers.
16 Plaintiff often frequents the area as he lives close to the Property. Plaintiff would
17 return to the Property once the barriers have been corrected because he enjoys the
18 restaurant located at the Property. Plaintiffs will likely return to the property within 6
19 months of the barriers being corrected and removed.

20 **13.** On information and belief, Plaintiff alleges that Defendant knew that
21 these elements and areas of the Property were inaccessible, violate state and federal
22 law, and interfere with (or deny) access to the physically disabled. Moreover,
23 Defendant has the financial resources to remove these barriers from the Property
24 (without much difficult or expense), and make the Property accessible to the
25 physically disabled. To date, however, the Defendant refuses to remove those
26 barriers.

27 **14.** On information and belief, Plaintiff alleges that at all relevant times,
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1 Defendant has possessed and enjoyed sufficient control and authority to modify the
2 Property to remove impediments to wheelchair access and to comply with the
3 Americans with Disabilities Act Accessibility Guidelines and Title 24 regulations.
4 Defendant has not removed such impediments and have not modified the Property to
5 conform to accessibility standards.

6 **VI. FIRST CAUSE OF ACTION: VIOLATION OF CALIFORNIA LAW**
7 **INCLUDING: THE UNRUH ACT, CIVIL CODE §§ 51, 52 AND THE**
8 **AMERICANS WITH DISABILITIES ACT AS INCORPORATED BY CIVIL**
9 **CODE SECTION 51(f)**

10 15. Plaintiff incorporates the allegations contained in paragraphs 1 through
11 14 for this claim and incorporates them herein.

12 16. At all times relevant to this complaint, California Civil Code § 51 has
13 provided that physically disabled persons are free and equal citizens of the state,
14 regardless of disability or medical condition:

15 All persons within the jurisdiction of this state are free and equal, and
16 no matter what their sex, race, color, religion, ancestry, national
17 origin, disability, or medical condition are entitled to the full and
18 equal accommodations, advantages, facilities, privileges, or services
19 in all business establishments of every kind whatsoever. Cal. Civ.
20 Code § 51(b).

21 17. California Civil Code § 52 provides that the discrimination against
22 Plaintiff on the basis of his disabilities constitutes a violation of the anti-
23 discrimination provisions of §§ 51 and 52.

24 18. Defendant's discrimination constitutes a separate and distinct violation of
25 California Civil Code § 52 which provides that:

26 Whoever denies, aids or incites a denial, or makes any discrimination
27 or distinction contrary to section 51, 51.5 or 51.6 is liable for each and
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1 every offense for the actual damages, and any amount that may be
2 determined by a jury, or a court sitting without a jury, up to a
3 maximum of three times the amount of actual damage but in no case
4 less than four thousand dollars (\$4,000) and any attorney's fees that
5 may be determined by the court in addition thereto, suffered by any
6 person denied the rights provided in Section 51, 51.5 or 51.6.

7 19. Plaintiff continues to be deterred from visiting the Subject Property based
8 upon the existence of the accessible barriers. In addition to the instance of
9 discrimination occurring in March 2022, Plaintiff is entitled to \$4,000.00 in statutory
10 damages for each additional occurrence of discrimination under California Civil Code
11 § 52.

12 20. Any violation of the Americans with Disabilities Act of 1990 (as pled in
13 the Third Cause of Action) constitutes a violation of California Civil Code § 51(f)
14 thus independently justifying an award of damages and injunctive relief pursuant to
15 California law. Per § 51(f), “[a] violation of the right of any individual under the
16 Americans with Disabilities Act of 1990 ... shall also constitute a violation of this
17 section.”

18 21. The actions and omissions of Defendant as herein alleged constitute a
19 denial of access to and use of the described public facilities by physically disabled
20 persons within the meaning of California Civil Code §§ 51 and 52. As a proximate
21 result of Defendant's action and omissions Defendant has discriminated against
22 Plaintiff in a violation of Civil Code §§ 51 and 51.

23 **VII.**

24 **SECOND CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH**
25 **DISABILITIES ACT OF 1990 (42 USC §§ 12101 *et seq.*)**

26 22. Plaintiff incorporates the allegations contained in paragraphs 1 through
27 21 for this claim and incorporates them herein.

1 23. As part of the Americans with Disabilities Act of 1990 (“ADA”),
2 Congress passed “Title III – Public Accommodations and Services Operated by
3 Private Entities.” 42 U.S.C. § 12181 et seq. The Property is one of the “private
4 entities” which are considered “public accommodations” for purposes of this title,
5 which includes any “restaurant, bar, or other sales or rental establishment serving food
6 or drink.” § 301(7)(B).

7 24. The ADA states that “[n]o individual shall be discriminated against on
8 the basis of disability in the full and equal enjoyment of the goods, services, facilities,
9 privileges, advantages, or accommodations of any place of public accommodation by
10 any person who owns, leases, or leases to, or operates a place of public
11 accommodation.” 42 U.S.C. § 12182.

12 25. The acts and omissions of Defendant set forth herein were in violation of
13 Plaintiff’s rights under the ADA and the regulations promulgated thereunder, 28 CFR
14 Part 36 *et seq.*

15 26. On information and belief, Plaintiff alleges that the Property was
16 constructed or altered after January 26, 1993 thus triggering requirements for removal
17 of barriers to access for disabled persons under § 303 of the ADA. Further on
18 information and belief, Plaintiff alleges that removal of each of the barriers
19 complained of by Plaintiff as hereinabove alleged, were at all times herein mentioned
20 “readily achievable” under the standards §§ 301 and 302 of the ADA. As noted
21 hereinabove, removal of each and every one of the architectural barriers complained
22 of herein were also required under California law. In the event that removal of any
23 barrier is found to be “not readily achievable,” Defendant still violated the ADA, per§
24 302(b)(2)(A)(v) by failing to provide all goods, services, privileges, advantages and
25 accommodations through alternative methods that were readily achievable.

26 27. On information and belief, as of the date of Plaintiff’s encounter at the
27 Property and as of the filing of this Complaint, the Defendant denies and continues to
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deny full and equal access to Plaintiff and to other disabled persons, including wheelchair users, in other respects, which violate plaintiff's rights to full and equal access and which discriminate against Plaintiff on the basis of his disability, thus wrongfully denying to plaintiff the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations, in violation of §§ 302 and 303 of the ADA. 42 USC §§ 12182 and 12183.

28. On information and belief, Defendant has continued to violate the law and deny the rights of Plaintiff and other disabled persons to access this public accommodation since on or before Plaintiff's encounters, as previously noted. Pursuant to the ADA, § 308, 42 USC 12188 *et seq.*, Plaintiff is entitled to the remedies and procedures set forth in § 204(a) of the Civil Rights Act of 1964, 42 USC 2000(a)-3(a), as Plaintiff is being subjected to discrimination on the basis of disability in violation of the ADA or has reasonable grounds for believing that he is about to be subjected to discrimination. Pursuant to § 308(a)(2), "In cases of violations of § 302(b)(2)(A)(iv) and § 303(a) ... injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title."

29. Plaintiff seeks relief pursuant to remedies set forth in§ 204(a) of the Civil Rights Act of 1964, 42 USC 2000(a)-3(a), and pursuant to Federal Regulations adopted to implement the Americans with Disabilities Act of 1990. Plaintiff is a qualified disabled person for purposes of § 308(a) of the ADA who is being subjected to discrimination on the basis of disability in violation of Title III and who has reasonable grounds for believing he will be subjected to such discrimination each time that he may attempt to use the property and premises.

PRAYER

WHEREFORE, Plaintiff prays that this court award damages and provide relief as follows:

1. Issue a preliminary and permanent injunction directing Defendant as current owner, operator, lessor, and/or lessee of the property and premises to modify the above described property and premises and related facilities so that each provides full and equal access to all persons, including but not limited to persons with physical disabilities who use wheelchairs, and issue a preliminary and permanent injunction directing Defendant to provide and maintain facilities usable by plaintiff and similarly situated persons with disabilities, and which provide full and equal access, as required by law, including appropriate changes in policy;

2. Retain jurisdiction over the Defendant until such time as the Court is satisfied that Defendant unlawful policies, practices, acts and omissions, and maintenance of inaccessible public facilities as complained of herein no longer occur, and cannot recur;

3. Award to Plaintiff all appropriate damages, including but not limited to statutory damages, general damages and treble damages in amounts within the jurisdiction of this Court, all according to proof;

4. Award to Plaintiff all reasonable statutory attorney fees, litigation expenses, and costs of this proceeding as provided by law;

5. Award to Plaintiff prejudgment interest pursuant to California Civil 17 Code§ 329

6. Grant such other and further relief as this Court may deem just and proper.

DATE: May 20, 2022

/s/Pamela Tsao

Pamela Tsao, attorney for Plaintiff

JOHN HO